

## VIRGINIA BOARD OF MEDICINE MINUTES

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Thursday, June 22, 2006

Department of Health Professions

Richmond, VA

### **CALL TO ORDER:**

The meeting of the Board convened at 8:10 a.m.

### **MEMBERS PRESENT:**

Thomas Leecost, DPM, President  
Gen. Clara Adams-Ender, RN, MSN  
John Armstrong, MD  
Sandra Anderson Bell, MD  
Christine Ober Bridge  
Ann T. Burks, JD  
Patrick Clougherty, MD  
Malcolm Cothran, MD, Vice President  
Claudette Dalton, MD  
Suzanne Everhart, DO  
Stephen Heretick, JD  
Valerie Hoffman, DC  
Brent Lambert, MD  
Juan Montero, MD  
Robert Mosby, MD  
Jane Piness, MD  
Karen Ransone, MD

### **MEMBERS ABSENT:**

Gopinath Jadhav, MD, Secretary/Treasurer

### **STAFF PRESENT:**

William L. Harp, MD, Executive Director  
Barbara Matusiak, MD, Medical Review Coordinator  
Jennifer Deschenes, Deputy Executive Director of Discipline  
Kate Nosbisch, Deputy Executive Director of  
Practitioner Information  
Elaine Yeatts, DHP Senior Policy Analyst  
Emily Wingfield, Assistant Attorney General  
Sandra Ryals, Chief Deputy Director, DHP  
Robert Nebiker, Agency Director, DHP  
Colanthia Morton Opher, Recording Secretary

### **OTHERS PRESENT:**

W. Scott Johnson, Medical Society of Virginia  
Sara Krivanec, Midwifery Consumer  
Juliana Fehr, CNM, PhD, FACNM, VA Chapter Representative  
Michael Jurgensen, Medical Society of Virginia  
Ann Hughes, Medical Society of Virginia  
Brynne Potter, CPM, Commonwealth Midwives Alliance  
Mike Semp, EMT  
Leslie Payne, CPM, Advisory Board on Midwifery, Chair

## **INTRODUCTION OF GUESTS**

Dr. Leecost acknowledged the guests present.

## **APPROVAL OF THE FEBRUARY 23, 2006 MINUTES**

Dr. Bell moved to approve the minutes of the Board dated February 23, 2006. The motion was seconded and carried.

## **ADOPTION OF AGENDA**

Ms. Burks moved to adopt the amended agenda. The motion was seconded and carried.

## **PUBLIC COMMENT ON AGENDA ITEMS**

### Legislative Proposal for 2007 General Assembly - Midwives Use of Drugs

Ann Hughes spoke to the Board on behalf of the Medical Society of Virginia, reiterating their position on opposing the recommendation of the Ad Hoc Committee on Midwifery and the Advisory Board on Midwifery regarding possession and administration of certain controlled substances. Ms. Hughes pointed out in the General Acts of the Assembly specific language in the bill that prohibits the Midwives from possessing and administering controlled substances.

Brynne Potter, CPM, representative for Commonwealth Midwives Alliance recapped the licensure journey of the midwives and remarked that in the interest of time, the midwives made a voluntary decision to withdraw the language in the bill requesting possession of certain controlled substances with the intent of addressing the request with the Board of Medicine at a later date. Ms. Potter expressed the Alliance's continued support for the recommendation stating that their hope is that the Board of Medicine would accept the responsibility to establish strict guidelines for use by this profession.

Sara Krivanec, a midwifery consumer, addressed the Board regarding the issue of the recommendation of the Midwives to possess and administer certain controlled substances and asked the Board give consideration to this request noting that it would make a safe practice even safer.

Mike Semp spoke to the Board in favor of the recommendation of the Midwives to possess and administer certain controlled substances, referencing the training, clinical hours and other similarities of the midwives' responsibilities to his employment as a veteran paramedic pointing out that his profession is allowed to administer medications with minimal supervision. Mr. Semp encouraged the Board to make home birth as safe as possible for all consumers.

### Regulatory Action – Implementation of HB1487 Restricted Volunteer License

No public comment.

Regulatory Action – Adoption of Emergency Regulations for 18 VAC 90-30 (Regulations Governing the Licensure of Nurse Practitioners)

Juliana Fehr, CNM, representative for the Virginia Chapter of the American College of Nurse-Midwives addressed the Board regarding and inconsistency in the regulations and law in the emergency draft of SB488.

Recommendation on Petition for Rule-Making

No public comment.

Recommendation on Proposed Amendments in response to Petition for Rule-making

No public comment.

Revisions to Guidance Documents for the Board

No public comment.

**INTRODUCTION OF THE NEW DEPUTY EXECUTIVE DIRECTOR FOR DISCIPLINE - JENNIFER L. DESCHENES, JD**

Dr. Harp introduced Jennifer L. Deschenes, JD, the successor to Karen Perrine as the Board's new Deputy Executive Director. Ms. Deschenes gave a brief overview of her employment history and expressed her eagerness to get to know and work with each of the Board members.

**REPORTS OF OFFICERS AND EXECUTIVE DIRECTOR**

**PRESIDENT**

No report.

**VICE-PRESIDENT**

Dr. Cothran reported that he attended the American Society of Interventional Pain Physicians conference May 4-7, 2006 and encouraged the Board members to attend such meetings in the future.

**SECRETARY-TREASURER**

No report.

## **EXECUTIVE DIRECTOR**

### Revenue and Expenditures Report

Dr. Harp advised that the Board is well within the budget.

### Health Practitioners' Intervention Program Statistics

Dr. Harp reviewed the report pointing out that of the 138 Medicine practitioners in the program, 109 were MDs.

### Pain Management/Addiction Symposium in Blacksburg

Dr. Harp advised that approximately 100 prescribers attended with the vast majority being from Southwest Virginia. Dr. Harp stated that the purpose was to get information about pain management, addiction and opioid prescribing out to the Southwest region. Dr. Harp noted that the symposium may be repeated around the state several times in the next year.

### Travel Reminders

Dr. Harp reminded the Board to submit travel vouchers within the 30-day guideline as noted by policies.

### Implementation of Three Paid Claims Evaluations

Dr. Harp advised that a small number of physicians were identified who were subject to this law and the board staff is in the process of assisting the practitioners in finding an acceptable evaluator in Virginia. Dr. Harp stated that there is an expectation of 5-6 of these a year.

### Federation Credentials Verification Service

Dr. Harp reminded the Board that the Executive Committee approved the Federation of State Medical Boards Credentialing Verification System (FCVS) and the board staff is now accepting primary source verification from the Federation.

### Virginia Podiatric Medical Association (VPMA) Proposal for Online Podiatric Radiological Technology-Limited Course

Dr. Harp advised that a member of the Radiological Technology advisory board would be attending a 2-day course in Virginia Beach to review VPMA course contents and the feasibility of the course being offered online.

## **OTHER ITEMS**

Dr. Harp advised the Board that given the number of consent orders processed, Neal Kauder has been asked to conduct a research to see if consent orders parallel the decision making

process of IFCs. Dr. Harp stated that the results should be ready to be presented at the Executive Committee meeting August 11, 2006.

Dr. Harp also mentioned that the General Assembly gave the Board the authority to write an advisory letter to a respondent in a case that does not rise to the level of a violation recommending attention to certain areas of practice that related to the complaint. Dr. Harp advised that a letter can also be sent to the source of the complaint advising that appropriate communication has been made to the licensee.

Dr. Harp noted that in August, the Board of Health Professions will receive and review Board comments on the telehealth issue.

Dr. Harp asked that with the national attention on initial and continuing competency, that the current Sub-Committee on Continuing Competency be expanded to an Ad Hoc Committee to address some of the rising concerns. Dr. Harp advised that the National Board of Medical Examiners (NBME) picked Virginia as one of four states they wish to study to determine how a practitioner is identified as needing remediation in terms of competency. Dr. Harp stated that the NBME will be here September 20-22, 2006.

Dr. Dalton reported on her attendance to the FSMB Annual Meeting. Dr. Dalton advised that the focus was "The Challenge of Change". Dr. Dalton stated that she moderated on "Strengthening Enforcement Performance" and remarked that Neal Kauder did a great job presenting Virginia's Sanctions Reference Point worksheets/data.

## **COMMITTEE AND ADVISORY BOARD REPORTS**

Dr. Cothran moved that the Board accept all Committee and Advisory Board Reports as presented in the agenda packet en bloc. The motion was seconded and carried.

## **OTHER REPORTS**

### Board of Health Professions

No report.

### Assistant Attorney General

Emily Wingfield, AAG gave the Board an update on the current cases in which she is representing the Board.

Ms. Wingfield presented and reviewed a draft flowchart of the Credentials Committee process highlighting some changes from the current process. In addition, Ms. Wingfield asked the Board to consider 1) use of three committee members instead of a quorum 2) set the Credentials Committee meetings every other month or in conjunction with the Executive Committee meetings 3) have the decisions of the Credentials Committee go to the Full Board for ratification 4) and in the event that the applicant requests a withdrawal after a denial from the Credentials Committee but before the ratification of the Full Board or Executive Committee to

accept or deny the withdrawal that the denial of the Credentials Committee stand – it should NOT be vacated.

Dr. Cothran moved to adopt the flowchart as a guidance document for the Credentials Committee process with a title to be determined later. The motion was seconded and carried.

#### Department of Health Professions Director

Mr. Nebiker reported that the budget had passed as introduced. Mr. Nebiker announced that the transfer of funds is still in the Appropriations Bill to be transferred; after the \$280,000 is transferred in FY2007, the transfers should cease.

Mr. Nebiker also noted that 26 additional positions, including 1 for the Board of Medicine are in the budget beginning July 1, 2006.

Mr. Nebiker also mentioned the revision of the travel regulations and advised the Board to expect the revisions within the next couple of weeks.

#### Podiatry Report

No report.

#### Chiropractic Report

No report.

### **NEW BUSINESS:**

#### **REPORT OF THE NOMINATING COMMITTEE**

General Adams-Ender reported the suggested slate of officers as follows: Malcolm Cothran, MD, President, Stephen Heretick, JD, Vice-President and Jane Piness, MD, Secretary-Treasurer.

Dr. Montero moved to close the nominations and moved to accept the slate of officers. The motion was seconded and carried unanimously. Dr. Leecost expressed his gratitude for the support during his tenure and Dr. Cothran graciously accepted election to the office of President. Dr. Harp praised Dr. Leecost for his time and availability over the last two years.

#### **REPORT OF THE 2007 SESSION OF THE GENERAL ASSEMBLY**

Ms. Yeatts presented and briefly reviewed the summary of the bills of the 2006 General Assembly affecting the Board of Medicine.

## Chart of Regulatory Actions

Ms. Yeatts provided and discussed the 2006 carry over bills addressing some questions posed by the Board.

### **UPDATE ON REGULATORY MATTERS**

#### Legislative Proposal for 2006 General Assembly - Midwives Use of Drugs

Leslie Payne, CPM and Chair for the Advisory Board on Midwifery, presented the recommendation of the Advisory Board and Ad Hoc Committee on Midwifery recommendation that the law be amended to allow licensed midwives to possess and administer certain controlled substances under the direction and control of the Board. Ms. Payne provided comments from Deren Bader, CPM, DrPH who is trained as a perinatal epidemiologist.

Dr. Montero wanted the record to reflect his opposition to this recommendation.

Ms. Payne asked that the Ad Hoc Committee be preserved for continued study of this matter.

Dr. Cothran moved to approve the recommendation as presented. The motion was seconded.

Ms. Burks asked for an amendment to the motion to add language consistent with the Nurse Practitioners regulations, which require medical supervision and direction.

The amendment was seconded and carried. The vote was 9 to 8.

After continued discussion, Dr. Everhart called for the question on Dr. Cothran's now amended motion and to end debate. The motion to end debate was seconded but failed.

Dr. Dalton expanded on Dr. Montero's points expressing concern about the level of education and understanding at this level of midwifery.

Dr. Lambert pointed out that the issue to focus on is whether or not the midwives are safer with or without access to controlled substances.

Dr. Bell called for the question on Dr. Cothran's amended motion. The vote to end debate was 15-2.

Dr. Cothran's amended motion was defeated 10-7.

#### Regulatory Actions – Fee Increase

Dr. Cothran moved that the Notice of Intended Regulatory Action for a proposed fee increase be withdrawn. The motion was seconded and carried.

Regulatory Action – Adoption of Final Regulations for Post-graduate training for graduates of Non-accredited medical schools

Dr. Mosby moved to adopt final amended regulations to require at least one year in an internship or residency for graduates for non-accredited medical schools who seek to be licensed in Virginia. The motion was seconded and carried.

Regulatory Action – Adoption of Final Regulations for Use of Major Conductive Block by Physicians in Office-based anesthesia

Dr. Bell moved to adopt final regulations to allow doctors of medicine or osteopathic medicine, qualified by training and scope of practice, to perform a major conductive block for diagnostic or therapeutic purposes. The motion was seconded and carried.

Regulatory Action – Implementation of HB1487 Restricted Volunteer License

An unidentified Board member moved to adopt the emergency regulations and a Notice of Intended Regulatory Action and a Notice of Intended Regulatory Action to replace the emergency regulations. The motion was seconded and carried.

Regulatory Action – Adoption of Proposed Regulations for Supervision of Provisional Licensees by Athletic Trainers

An unidentified Board member moved to adopt proposed amended regulations to require daily, on-site review and evaluation of services provided by a provisional licensee in athletic training. The motion was seconded and carried.

Regulatory Action – Adoption of Proposed Regulations for Pain Management

Dr. Cothran moved to refer to the Legislative Committee to draft proposed regulations. The motion was seconded and carried.

Regulatory – Action – Adoption of Proposed Regulations for the mixing, diluting and reconstituting of sterile drug products

Dr. Mosby moved to open for discussion the proposed regulations for the mixing, diluting and reconstituting of sterile drug products. After discussion, Dr. Dalton moved to adopt the proposed regulations with an amendment to read “The emergency drugs used in the practice of anesthesiology and administration of allergens may exceed 10 hours after completion of preparation provided administration does not exceed the specified expiration date on the multiple use vial and there is compliance with all other requirements in this section.” The motion was seconded and carried.

Adoption of Proposed Regulations – Inactive License for Nurse Practitioners

Dr. Montero moved to adopt the proposed regulations identical to those adopted by the Board of Nursing. The motion was seconded and carried.



### Regulatory Action – Adoption of Emergency Regulations for 18 VAC 90-30 (Regulations Governing the Licensure of Nurse Practitioners)

Dr. Montero moved to adopt emergency regulations and a Notice of Intended Regulatory Action to replace the emergency regulations. The motion was seconded and carried.

### Regulatory Actions – Adoption of Proposed Regulations – Collaborative Practice Agreements with the Board of Pharmacy

Scotti Russell, Executive Director for the Board of Pharmacy, fielded some questions from the Board to clarify the intent of the regulation, liability, etc. Dr. Everhart moved to adopt the proposed regulations for collaborative practice agreements jointly with the Board of Pharmacy. After a brief discussion, Dr. Montero called for the question. The motion was seconded and carried.

### Recommendation on Petition for Rule-Making

Dr. Everhart moved to accept the petition for rulemaking to waive the continuing education requirements for doctors whose practice is limited to serving as a medical examiner and issue a Notice of Intent of Regulatory Action. The motion was seconded and carried. The vote was 14 to 3.

### Recommendation on Proposed Amendments in response to Petition for Rule-making

Dr. Mosby moved to adopt the recommendations that there be no change to the current regulations. The motion was seconded. After a long discussion, Dr. Everhart called for the question. The motion to end debate failed. Dr. Dalton proposed an amendment to strike the requirement of 15 hours of the face-to-face hours leaving the requirement for continuing education at 30 CAT I and 30 CAT II. The amendment was accepted. The motion was seconded and carried.

### Revisions to Guidance Documents for the Board

Dr. Ransone moved to replace the current information with the Guidance on Questions about Medical Records as presented in the agenda packet on pages 189-193. The motion was seconded and carried.

Dr. Montero moved to direct staff to revise the Consumer Guide. The motion was seconded and carried.

Dr. Armstrong moved to remove pain management Guidance documents 85-9 and 8-14 and replace with 85-24. The motion was seconded. After discussion, Ms. Bridge moved to delegate to the Executive Director the authority to determine which documents to publish on website and refer to the Legislative Committee for review. The motion was seconded and carried.

## **PRACTITIONER INFORMATION REPORT**

Kate Nosbisch gave updated statistics on the collection of emergency contact information along with website hits and visits.

## **DISCIPLINE REPORT**

Jennifer Deschenes briefly went over the comparisons in the case and CCA numbers from February to present noting an increase in investigations.

## **PASSING OF THE GAVEL**

Dr. Leecost spoke of the worthwhile work that the Board is doing and the responsibilities that come along with the position. Dr. Leecost then passed the gavel on to President-Elect Dr. Cothran. Dr. Cothran's first request is that everyone arrive on time for the meetings.

**NEXT SCHEDULED MEETING:** October 19, 2006

**ADJOURNMENT:** With no further business to conduct, the meeting adjourned at 2:15 p.m.

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Malcolm L. Cothran, Jr., MD  
President

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William L. Harp, M.D.  
Executive Director

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Colanthia Morton Opher  
Recording Secretary